

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

)
 Amendment of Part 90 of)
 the Commission's Rules to)
 Facilitate the Future)
 Development of SMR Systems)
 in the 800 MHz Frequency Band)

PR Docket No. 93-144

To: The Commission

REPLY COMMENTS OF PACTEL PAGING

PacTel Paging ("PacTel"), by its attorneys, hereby submits its reply to the comments submitted in response to the Notice of Proposed Rulemaking (the "Notice")^{1/} which proposes rule changes to promote continued growth of the 800 MHz Specialized Mobile Radio ("SMR") industry. In reply, the following is respectfully shown:

I. Preliminary Statement

1. PacTel, in its comments in this proceeding,^{2/} generally supported the Commission's effort to facilitate the aggregation of 800 MHz SMR channels throughout broader geographic regions in order to foster the implementation of improved service

^{1/} FCC 93-257, released June 9, 1993.

^{2/} See Comments of PacTel Paging filed July 19, 1993 (the "PacTel Comments").

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and advanced technologies.^{3/} PacTel noted, however, that the proposed licensing plan accorded a substantial licensing preference to incumbent 800 MHz SMR licensees over potentially extensive geographic areas.^{4/} This proposal was supported primarily by existing 800 MHz SMR licensees.^{5/} As PacTel demonstrated in its Comments, the public interest would be better served by adopting open entry and smaller geographic licensing areas.

II. The Comments Confirm that Open Entry Better Serves the Public Interest

2. The PacTel Comments urged that initial eligibility for EMSP licenses not be restricted to existing licensees.^{6/} PacTel posited that the public interest would be better served by open entry policies that would foster new market entrants and increased competition.

3. Several other commenters make points that support PacTel's position. Bell Atlantic notes that the proposed initial licensing restriction would effectively preclude affiliates of wireline carriers from participating in any meaningful fashion in EMSP licensing because of the historical prohibition on wireline

^{3/} See PacTel Comments at Section I.

^{4/} Id. at Sections II, III and IV.

^{5/} See generally, American Mobile Telecommunications Association, Inc. Comments, Dial Page, Inc. Comments, and Fleet Call, Inc. Comments.

^{6/} See PacTel Comments at Section II.

SMR eligibility embodied in FCC Rules Section 90.603(c).^{7/}

BellSouth echoes this position, noting that previously ineligible entities "should be allowed to participate in EMSP without delay".^{8/} Southwestern Bell ("SWB") argues that "the Commission should not restrict the initial licensing period to existing SMR licensees, but should open licensing initially to all interested and qualified providers".^{9/} Like PacTel, SWB finds that such a policy may not serve the public interest.

III. The Comments Support PacTel's View that MTAs Are Too Large a Licensing Area

4. PacTel expressed concern in its comments that the Rand McNally Major Trading Areas ("MTAs") are so large that their use as EMSP licensing regions would result in substantial frequency conflicts with commensurately fewer licensing opportunities for applicants.^{10/} PacTel suggested that Basic Trading Areas ("BTAs") would better serve the public interest by ensuring the maximum opportunity for new applicants and would better fit the existing geographic nature of the service.

^{7/} See Bell Atlantic Comments at pp. 2-4. Bell Atlantic asks the Commission to act upon longstanding requests of certain wireline carriers seeking reconsideration of the prohibition. See, e.g., Bell Atlantic Petition For Reconsideration in PR Docket No. 86-3, filed August 21, 1992.

^{8/} BellSouth Comments at p. 10.

^{9/} Southwestern Bell Comments at p. 19.

^{10/} PacTel Comments, Section III.

5. PacTel's view is supported by other commenters. The Council of Independent Communications Suppliers ("CICS"), which represents various private radio licensees, concludes that BTAs "would be more consistent with the existing licensing patterns for 800 MHz systems".^{11/} Similarly, the Utilities Telecommunications Council ("UTC"), whose members operate numerous private 800 MHz systems, concludes that "BTAs would promote diversity in license ownership because, unlike MTAs, BTAs are not so large as to unnecessarily restrict the number of EMSP licensees".^{12/}

6. Other commenters, while not specifically endorsing the BTA concept, support smaller as compared to larger territories. For example, SWB endorses the MSA/RSA licensing structure already in place for cellular in order to foster fair competition between cellular systems and EMSP systems.^{13/} And NABER expresses considerable concern that defined licensing boundaries based upon MTAs will complicate licensing because they will encompass multiple metropolitan area markets of various populations and sizes in a single region and thus create skewed licensing incentives.^{14/} These comments support the view that the MTA licensing plan is not optimal.

^{11/} See CICS Comments at para. 4.

^{12/} UTC Comments at p. 3.

^{13/} See SWB Comments at pp. 20-21.

^{14/} See NABER Comments at pp. 5-6. NABER supports licensee defined service areas.

**IV. Others Support PacTel's Views on Transferability
and the Need for High Efficiency Standards**

7. PacTel argued in its comments that EMSP licenses should be freely transferable since no licensing scheme is perfect and post-licensing transactions provide a market driven safeguard that will help get the authorizations into the hands of the most qualified applicants. BellSouth and SWB both concur, noting that prohibiting assignments and transfers will merely serve to insulate SMR and EMSP licensees from new entry and competition, thereby diserving the public interest.^{15/} FleetCall also expresses concern that anti-alienation provisions operate to prevent optimal economic business decisions.^{16/}

8. In the period since the Notice was adopted, the Congress has moved closer to authorizing the use of competitive bidding procedures to license commercial mobile spectrum.^{17/} Auctions will provide a degree of protection against speculation by insubstantial, unqualified, insincere applicants. Under these circumstances, post-grant restrictions on alienation become much less important.

^{15/} BellSouth Comments at pp. 11-12; SWB Comments at p. 22.

^{16/} See FleetCall Comments at pp. 18-19. FleetCall suggests, disingenuously, that transfer restrictions should be applied to new entrants licensed in the second stage of EMSP licensing. Such a transparent inequity should not be endorsed by the Commission.

^{17/} Indeed, the ability of the Commission to utilize procedures other than auctions to issue contested licenses appears likely to be severely circumscribed.

9. PacTel also expressed the view that the Commission should adopt minimum efficiency standards to assure that EMSP licenses are devoted to advanced technologies.^{18/} This position also was espoused by FleetCall, who recommends that EMSP licensees be required to utilize technology that is six times more efficient than today's analog SMR transmission technology.^{19/} FleetCall makes the valid point that the absence of an efficiency standard will result in the proliferation of non-compatible systems that will be unable to offer seamless roaming services.

Conclusion

On balance, PacTel submits that the comments in this proceeding, properly viewed, support the modifications of the Commission's proposal as set forth herein.

Respectfully submitted,

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^{18/} PacTel Comments, Section IV.

^{19/} FleetCall Comments at pp. 13-14.